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6 Attorneys for Plaintiff
 7 CRAIG YATES

8 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

10 CRAIG YATES

Case No. C 07 4087JSW

11 Plaintiff,

RELATED CASE NO. C 07 3685 SBA

12 vs.

**PLAINTIFF YATES' OPPOSITION TO
 ADMINISTRATIVE MOTION TO
 CONSIDER CASES RELATED**

13 UNION SQUARE; CITY AND COUNTY
 14 OF SAN FRANCISCO; CITY OF SAN
 FRANCISCO UPTOWN PARKING
 CORPORATION; EMPORIO RULLI IL
 15 CAFFE UNION SQ.; EMPORIO RULLI IL
 CAFFE UNION SQ., INC.; and DOES 1
 16 through 50, Inclusive,

Accompanying papers: Declaration of Gene
 A. Farber

Complaint Filed: August 9, 2007
 Trial Date: None

17 Defendants.
 18 _____ /
 19

20 CRAIG YATES opposes the transfer of his garden variety disability rights case
 21 because a complex, class action involving the entire City and County of San Francisco is
 22 pending before another Judge.

23 **INTRODUCTION**

24 *Kirola*¹ is “Complex Litigation;” it is a class action involving thousands of issues that
 25 may take years to resolve. *Yates*² is not; it involves only one location and Local Rule 56
 26 should provide a speedy resolution to the *Yates* case.

27 ¹ *Kirola, et al. v. The City and County of San Francisco, et al.* NDC # C 07 3685
 28

1 In order to resolve any lingering ambiguity whether the issues at Union Square overlap
 2 both cases, the attorneys for *Kirola et al.* have agreed to amend their complaint to specifically
 3 exclude Union Square from their allegations.

4 There is no reason to refer *Yates* when referral will only delay its resolution. Denying
 5 referral of this case would conserve judicial resources because *Yates* is easily managed under
 6 Local Rule 56 to a speedy conclusion. Even if *Kirola* were to proceed under Rule 56, the
 7 extensive proceedings projected in the Class Action Litigation will deal extensively with
 8 thousands of locations and issues extraneous to the condition of Union Square park and
 9 garage alleged in *Yates*. In addition, transfer of *Yates* would cause undue delay. Special case
 10 management techniques are often required in complex litigation involving many parties and
 11 large numbers of witnesses and documents and extensive discovery.

12 A “related case” is one based on similar claims or involving the same transaction or
 13 event. If the cases are deemed related, whether to consolidate the cases is a matter within the
 14 discretion of the assigned judge pursuant to further proceedings.

15

**I. THESE CASES DO NOT CONCERN SUBSTANTIALLY THE SAME
 17 TRANSACTION OR EVENT. Local Rule 3 – 12 (a) 1.**

18 A search of the *Kirola* complaint revels that “Union Square” appears therein
 19 once, and only once, as follows:

20 37. Plaintiff MICHAEL KWOK also goes to Union Square
 21 weekly. When he does so, he crosses Market Street at 5th Street,
 22 which is hazardous because the locations of the curb ramps
 23 force him into oncoming traffic. Potholes created by streetcars
 24 create additional hazards at this intersection, as well as at the
 25 intersection of Market Street and 8th Street. At p. 10:14-17.

26 Of course, this allegation has nothing to do with the condition of Union Square, itself.
 27 The *Yates* complaint, on the other hand is exclusively concerned with Union Square and its

² *Yates v. Union Square, et al.* NDC # C 07 4087

1 parking garage.

2

3 **II. CONDUCTING THESE TWO CASES BEFORE DIFFERENT JUDGES WILL**

4 **INVOLVE NEITHER CONFLICTING RESULTS NOR UNDULY**

5 **BURDENSONE DUPLICATION OF LABOR OR EXPENSE. (Local Rule 3-**

6 **12(a)(2).)**

7 The facts of each alleged noncompliance with State and Federal disability laws are

8 unique to the location of each alleged violation. It would do no good to transfer the *Yates*

9 case because the issues at Union Square are unique to that location. The thousands of issues

10 concerning the thousands of other locations involved in the *Kirola* case are unique to those

11 locations. Moving *Yates* would only further delay resolution of that case, which is governed

12 by Local Rule 56 providing for speedy, inexpensive resolution of the issues.

13 In order to resolve any lingering ambiguity whether the issues at Union Square overlap

14 both cases, the attorneys for *Kirola et al.* have agreed to amend their complaint to specifically

15 exclude Union Square from their allegations.

16

17 **III. THESE CASES DO NOT CONCERN SUBSTANTIALLY THE SAME**

18 **PROPERTY. (Local Rule 3-12(a)(1).)**

19 Yates is suing over the condition of Union Square parking garage and park. *Kirola et*

20 *al.* are suing over the condition of virtually the entire public premises, facilities, programs,

21 services, and activities of the City and County of San Francisco.

22 These two cases do not concern substantially the same transaction or event.

23 Yates is suing because Union Square garage denies access to his high top van and

24 because the garage and Union Square park deny him access. *Kirola et al.* are suing because

25 they are denied access to all non-conforming aspects of the City.

26 Defendant's recitation that the allegations in the complaints concern the same

27 transaction/event is exaggerated. To demonstrate this, YATES sets forth the language of the

28 complaints verbatim, rather than cite to the complaints. The allegations do not concern

1 substantially the same items. Please compare the following:

<u>Yates</u> Allegations apply only to Union Square and sidewalk	<u>Kirola</u> Allegations apply to the whole city
(1) Failure to provide a safe and accessible path of travel from the southern boundary to the square. ¶13, p8, lines 7-8	e. Public facilities with hazardous or inaccessible paths of travel, making them unsafe for persons with mobility disabilities; m. Public facilities that lack or have insufficient parking accessible to persons with mobility disabilities; ¶¶15(e), 15 (m), p 5, lines 9-10 and 26-28
(2) Failure to provide safe and accessible disabled high-top van parking facilities fully complying with the requirements of the code. ¶13, p8, lines 9-11	m. Public facilities that lack or have insufficient parking accessible to persons with mobility disabilities; ¶15 (m), p 5, lines 26-28
(3) Failure to provide an accessible and safe path of travel for use by persons with disabilities from the public parking areas to the square, including accessible ramp facilities. ¶13, p8, lines 12-15	e. Public facilities with hazardous or inaccessible paths of travel, making them unsafe for persons with mobility disabilities; m. Public facilities that lack or have insufficient parking accessible to persons with mobility disabilities; ¶15(e), 15 (m), p 5, lines 9-10 and 26-28
(4) Failure to provide open and accessible ticket payment facilities. ¶13, p8, lines 16-17	m. Public facilities that lack or have insufficient parking accessible to persons with mobility disabilities; ¶15 (m), p 5, lines 26-28
(5) Failure to provide accessible service and condiment counter facilities. ¶13, p8, lines 18-19	j. Public facilities with drinking fountains and service counters that are inaccessible to persons with mobility disabilities; ¶15 (j), p 5, lines 19-20
(6) Failure to modify, draft or implement policies, practices, and procedures, and provide adequate training and information to staff, so as to maintain accessible parking facilities and their availability, or otherwise provide access through reasonable alternative accommodations and methods. ¶13, p8, lines 20-25	63. Defendants' discriminatory conduct alleged herein constitutes, <i>inter alia</i> , (a) failure to provide safe and equal access to the CITY's programs, facilities, services, and activities; (b) denial of access to the CITY's facilities, programs, services, and activities; (c) failure to formulate and implement an adequate self-evaluation and transition plan; (d) failure to take prompt and equitable steps to remedy its discriminatory conduct; and (e) failure to maintain in operable condition those features of facilities and equipment that Title II of the ADA requires to be readily accessible to and usable by persons with disabilities. ¶63, p 15, lines 16-22

IV. THESE CASES DO NOT CONCERN SUBSTANTIALLY THE SAME PARTIES. (Local Rule 3-12(a)(1).)

Additionally, *Yates* is suing Uptown Parking Corporation, Emporio Rulli Il Caffe Union Sq. and Emporio Rulli Il Caffe Union Sq., Inc., in addition to the City and County of San Francisco. These additional defendants are not present in the *Kirola* Case. *Kirola et al.* are suing city officials Gavin Newsom, Arron Peskin, Jake McGoldrick, Michela Alioto-Pier, Ed Jew, Chris Daly Sean Elsbernd, Bevan Dufty, Tom Ammiano, Sophie Maxwell, Ross Mirkarimi, and Gerardo Sandoval, in addition to the City and County of San Francisco. These additional defendants are not present in the *Yates* case.

V. CONCLUSION

The *Yates* and *Kirola* actions should not be related. Such action would only delay resolution of *Yates* unnecessarily and burden the *Kirola* case with further procedural complications.

Finally, counsel understands that the *Kirola* attorneys have agreed amend the *Kirola* complaint to remove even the remote ambiguity of whether the *Yates* allegations concerning Union Square overlap the *Kirola* allegations concerning the entire City and County of San Francisco.

Dated: October 23, 2007

/s/
GENE A. FARBER
Attorney for CRAIG YATES

Certificate or Proof of Service by Mail, Fax or Personal Delivery1 *State of California*2 *County of Contra Costa*

{

ss.

3 I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident
 4 of the Counties of Contra Costa, over the age of eighteen (18) years and not a party to the within action or
 5 proceeding; that my business address is Thimesch Law Offices, 158 Hilltop Crescent, Walnut Creek, California
 6 94597-3452; that on the below date, following normal business practice, I caused to be served the foregoing
 7 document described as:

**PLAINTIFF YATES' OPPOSITION TO ADMINISTRATIVE MOTION TO CONSIDER
CASES RELATED**

(Yates v. City and County of San Francisco, et al. (U.S. District Court for the N. Dist. of Calif., Case No. C07-4087 EDL))

7 on the interested parties in this action, by taking a true copy thereof and conveying as follows:

8 **See Attached Service List.**9 **Personal Delivery:** By personally delivering, or causing to be hand delivered through a fax-filing or
 10 messenger agency, true and exact copies of these documents to the above entitled place of
 11 business (or as indicated on the attached service list) with directions to deliver them
 12 immediately to _____.11 **Email:** By email transmission with a copy of the subject document in Portable Document Format
 12 (PDF), sent to the below designated email addresses, and with a request for received- and read-
 13 receipts. (**Without exhibits, which are to follow by overnight mail;** **With exhibits;** **N/A**)13 **Facsimile:** By facsimile transmission, from our regular facsimile machine at (888) 210-8868, at
 14 approximately _____ 2 PM _____, or soon thereafter, addressed to the following facsimile
 15 machine (**Without exhibits, which are to follow by mail;** **With exhibits**):

Name of Person Served: _____ See Above

Facsimile Telephone No: _____ See Above

15 A facsimile machine report was printed immediately thereafter, which verified that the
 16 transmission was complete and without error.17 **U.S. Mail and/or Overnight:** By depositing true copies thereof, enclosed in a sealed envelope(s) with
 18 postage thereon fully prepaid, marked with the above address(es), and placed in:
 19 in First Class United States Mail
 20 in priority, or standard, overnight mail via Federal Express,19 I am readily familiar with our office's practice for collection and processing of correspondence
 20 for mailing with the United States Postal Service. In the ordinary course of business,
 21 correspondence, including said envelope, will be deposited with the United States Postal
 22 Service in Walnut Creek, and designated overnight packages will be timely scheduled for
 23 pickup or placed in Federal Express drop boxes or left at drop centers in Walnut Creek.21 I declare that I am employed in the office of a member of the bar of this court at whose direction the
 22 service was made, and that the foregoing is true and correct under penalty of perjury pursuant to the laws of the
 23 United States and the state of California. Executed this October 23, 2007, in San Francisco, California.

23 By:

/s/

24 Gene Farber
 25 (Original signed)

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